

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

ZALTON BROOKS,

Plaintiff,

VS.

**HOUSTON COUNTY DETENTION
CENTER, *et al.*,**

Defendants.

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CASE NO. 5:15-CV-408-MTT-MSH

REPORT AND RECOMMENDATION

On March 15, 2017, this Court issued an Order (ECF No. 50) notifying Plaintiff that the remaining Defendant in this case, Defendant Gary, filed a motion to dismiss (ECF No. 49) the Complaint for Plaintiff's failure to prosecute. Plaintiff was therein directed to respond to the motion within twenty-one days. Order 3-4, Mar. 15, 2017, ECF No. 50. Plaintiff was advised by the Court that his remaining claims could be dismissed if he failed to comply with the Court's Orders and respond to the Defendant's motion to dismiss. *See* Order 3-4, Mar. 15, 2017; *see also* Order for Service 8-10, Mar. 14, 2016, ECF No. 14. Plaintiff did not respond to the motion.

Defendant Gary contends that Plaintiff's complaint should be dismissed for Plaintiff's failure to prosecute his claims and for his failure to participate in discovery. Def.'s Br. in Supp. Mot. to Dismiss 3-5, ECF No. 49-1; *see also* Fed. R. Civ. P. 41(b) & 37(b). Prior to filing the motion to dismiss, Defendant made multiple good faith efforts to contact Plaintiff regarding discovery. *See* Def.'s Br. in Supp. Mot. to Dismiss Exs. B-

E, ECF Nos. 49-3 to -6. Plaintiff did not respond to those requests. The last filing on the docket from Plaintiff is a May 2, 2016 letter notifying the Court of Plaintiff's change in address. *See* Letter 1, ECF No. 29. All subsequent documents have been mailed to Plaintiff at his new address, but Plaintiff failed to respond to any motion or order since his notification of address change. *See generally* Docket.

Plaintiff has thus failed to comply with the Court's orders and has failed to prosecute his case. Consequently, the Court recommends dismissal of Plaintiff's Complaint with prejudice pursuant to Federal Rules of Civil Procedure Rule 41(b). It is recommended that Defendant's motion (ECF No. 49) be granted and Plaintiff's Complaint be dismissed.¹ Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, within fourteen (14) days after being served with a copy hereof. The district judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting

¹ Defendant also seeks an extension of time to complete discovery (ECF No. 51). It is recommended that this motion be denied as moot upon adoption of this Report and Recommendation.

and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 7th day of June, 2017.

/s/ Stephen Hyles

UNITED STATES MAGISTRATE JUDGE